

ANN BAVENDER*
JAMES A. CASEY
KAREN L. CASBER*
ANNE GOODWIN CRUMP*
VINCENT J. CURTIS, JR.
PAUL J. FELDMAN*
ERIC FISHMAN*
RICHARD HILDRETH
EDWARD W. HUMMERS, JR.
FRANK R. JAZZO
CHARLES H. KENNEDY*
ANDREW S. KERSTING*
KATHRYN A. KLEIMAN
HARRY C. MARTIN*
GEORGE PETRUTSAS
LEONARD R. RAISH
JAMES P. RILEY
MARVIN ROSENBERG
KATHLEEN VICTORY*
HOWARD M. WEISS

* NOT ADMITTED IN VIRGINIA

ORIGINAL
FLETCHER, HEALD & HILDRETH, P.L.C.

ATTORNEYS AT LAW
11th FLOOR, 1300 NORTH 17th STREET
ROSSLYN, VIRGINIA 22209-3801

(703) 812-0400

TELECOPIER

(703) 812-0486

INTERNET

HILDRETH@ATTMAIL.COM

October 25, 1995

FRANK U. FLETCHER
(1938-1986)
ROBERT L. HEALD
(1958-1983)
PAUL D.P. SPEARMAN
(1938-1982)
FRANK ROBERSON
(1939-1981)
RUSSELL ROWELL
(1948-1977)

RETIRED
EDWARD F. KENEHAN

CONSULTANT FOR INTERNATIONAL AND
INTERGOVERNMENTAL AFFAIRS
SHELDON J. KRYS
U. S. AMBASSADOR (ret.)

OF COUNSEL
EDWARD A. CAINE*

WRITER'S NUMBER
(703) 812-

RECEIVED

OCT 25 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY
DOCKET FILE COPY ORIGINAL

BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: MM Docket No. 95-44
RM-8602
Fair Bluff, North Carolina

Dear Mr. Caton:

Transmitted herewith, on behalf of S.O.S. Broadcasting, are an original and four copies of its "Opposition to Petition for Reconsideration" with regard to the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate with the undersigned.

Very truly yours,
FLETCHER, HEALD & HILDRETH, P.L.C.

Anne Goodwin Crump
Anne Goodwin Crump
Counsel for S.O.S. Broadcasting

Enclosures

No. of Copies rec'd
List ABCDE

024

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

ORIGINAL

RECEIVED

OCT 25 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

DOCKET FILE COPY ORIGINAL

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations)
(Fair Bluff, North Carolina))

MM DOCKET NO. 95-44
RM-8602

Directed to: Chief, Policy and Rules Division

OPPOSITION TO PETITION FOR RECONSIDERATION

S.O.S. Broadcasting, ("S.O.S."), by its attorneys, hereby respectfully submits its Opposition to the Petition for Reconsideration submitted by Atlantic Broadcasting Co., Inc. ("Atlantic"), on September 11, 1995, with regard to the above-referenced matter. With respect thereto, the following is stated:

1. The above-captioned proceeding began when Atlantic requested that the Commission delete Channel 287A at Fair Bluff, North Carolina, from the Table of Allotments or, in the alternative, impose a severe site restriction on the allotment. Atlantic sought this change in order to be able to operate WDAR-FM with a non-directional antenna in lieu of its current directional antenna. S.O.S. opposed the deletion of the allotment, expressing an interest in filing an application, and also opposed the imposition of a further site restriction. Jack Miller and Robert Gauss also expressed interest in submitting applications for the Fair Bluff allotment.

2. The Commission initially determined that it would retain the Fair Bluff allotment but grant Atlantic's request for a substantial site restriction. Report and Order, DA 95-1656 (released August 2, 1995). Thereafter, the Commission issued an Order, DA 95-1772 (released

August 10, 1995) ("Recission Order"), rescinding its decision and issued a second Report and Order, DA 95-1774 (released August 21, 1995). In the second Report and Order, the Commission found that the public interest would be served by retaining the Fair Bluff allotment without the requested site restriction. The Commission found that the benefits of enabling WDAR-FM to operate non-directionally were not sufficient to justify the imposition of a 12.7 kilometer site restriction.

3. Atlantic has now sought reconsideration of the Recission Order and the second Report and Order. Atlantic claims that the proposed site restriction would not place an undue burden on Fair Bluff applicants' ability to find a suitable transmitter site and would allow WDAR-FM to provide additional service. Atlantic states that it has found a potential transmitter site which would be suitable for use by Fair Bluff applicants and which is likely to be available to them.

4. Atlantic cannot refute, however, the fact that the imposition of such a substantial site restriction as it has requested would severely limit the choices of potential transmitter sites available to S.O.S. and other potential Fair Bluff applicants. Although Atlantic may have located one potential transmitter site, it has made no showing that this site is the best site for a Fair Bluff station or that it would provide sufficiently good coverage of the community and market to make the station viable. Moreover, if any difficulties should arise with the site, Fair Bluff applicants would have very little recourse. Something as simple as failure to agree with the site owner as to lease terms could effectively prevent the Fair Bluff station from being placed into operation. In sum, the severe site restriction requested would greatly limit the flexibility of Fair Bluff applicants in choosing a transmitter site. The Commission has a long-standing policy to allot channels with the least site restriction possible for the very purpose of avoiding such situations.

See Vacaville, CA, 4 FCC Rcd 8315 (1989), recon. denied, 6 FCC Rcd 143 (1991). Atlantic has not demonstrated, and indeed cannot demonstrate, that the proposed site restriction would not impinge upon a Fair Bluff applicant's choice of transmitter sites.

5. Moreover, Atlantic's proposed site restriction goes directly against the Commission's established policy not to change reference co-ordinates for vacant allotments without making other changes in the Table of Allotments through a rule making proceeding. As stated in the second Report and Order, "[t]he reason for this policy is to protect the integrity of the FM Table fo Allotments, which would be compr[om]ised were we to change reference coordinates to accommodate FM applications." DA 95-1774 at ¶ 4. Atlantic argues that its proposed change in the reference co-ordinates for Fair Bluff does not contravene this policy because it also proposed the deletion of the Fair Bluff allotment. Once an expression of interest in the Fair Bluff allotment was made, however, and the Commission determined that it would retain that allotment, the outcome of adopting Atlantic's proposal would be simply to change the Fair Bluff reference co-ordinates in order to accommodate Atlantic's modification application. This is precisely the result the Commission is trying to avoid.

6. Atlantic proposed no upgrade or change in channel for Fair Bluff in order to create a more efficient allotment scheme. If the Commission were to change its policy and adopt Atlantic's proposal, it would be all too easy for other stations wishing to change a vacant allotment's reference co-ordinates simply to propose that allotment's deletion, thus accomplishing by the back door what they could not do directly. Such a policy would create significant uncertainty for prospective applicants for a vacant FM channel. Such prospective applicants might be in the process of obtaining a site location, only to have a site restriction

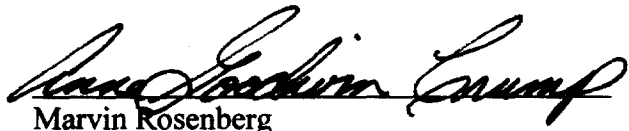
imposed which would alter significantly the area available for use. The integrity of the FM Table of Allotments would indeed be compromised.

7. Atlantic has not shown that the imposition of a severe site restriction on the Fair Bluff allotment is the only means of achieving omnidirectional operation for WDAR-FM, nor has Atlantic shown that WDAR-FM's coverage is inadequate. While Atlantic has stated that WDAR-FM would serve more people, it has not shown or even alleged that these people are not already well served by other stations in the area. In sum, Atlantic has not shown that the benefits of adopting its proposal would outweigh the detriments of imposing a severe site restriction which could compromise both the viability of a Fair Bluff station and the integrity of the FM Table of Allotments.

WHEREFORE, for the foregoing reasons, S.O.S. urges the Commission to maintain the Channel 287A allotment at Fair Bluff as that community's first local FM service, without the imposition of a further site restriction on that channel.

Respectfully submitted,

S.O.S. BROADCASTING

By: 
Marvin Rosenberg
Frank R. Jazzo
Anne Goodwin Crump

FLETCHER, HEALD & HILDRETH, P.L.C.
1300 N. 17th Street
Eleventh Floor
Rosslyn, Virginia 22209
(703) 812-0400

October 25, 1995

CERTIFICATE OF SERVICE

I, Mary A. Haller, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that true copies of the foregoing "Opposition to Petition for Reconsideration" were sent this 25th day of October, 1995, by first-class United States mail, postage prepaid, to the following:

Ms. Leslie K. Shapiro*
Allocations Branch
Mass Media Bureau
Federal Communications Commission
2000 M Street, N.W., 5th Floor
Washington, D.C. 20554

Mr. Robert Gauss
3758 Waccawache Drive
Murrells Inlet, SC 29576

Mark J. Prak, Esq.
Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P.
P.O. Box 1800
Raleigh, NC 27601
Counsel for Jack Miller

Gary S. Smithwick, Esq.
Smithwick & Belendiuk, P.C.
1990 M Street, N.W., Suite 510
Washington, D.C. 20036
Counsel for Atlantic Broadcasting Co., Inc.

*BY HAND DELIVERY


Mary A. Haller